

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALEKSANDAR ZUNZUROVSKI,

Defendant-Appellee.

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UNPUBLISHED

June 12, 2001

No. 229674

Isabella Circuit Court

LC No. 00-009188-FH

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN MICHAEL SUCHODOLSKI,

Defendant-Appellee.

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No. 229675

Isabella Circuit Court

LC No. 00-009187-FH

Before: Hood, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

The prosecution appeals as of right from an order granting defendants' motion to quash the bindovers. We reverse.

On August 16, 1999, at approximately 9:00 p.m., defendants went to ABC Warehouse and purchased a thirty-six inch television. The defendants paid for the television by check. Although the checking account was in defendant Aleksandar Zunzurovski's name, the store clerk alleged that defendant John Suchodolski wrote out the check in the amount of \$1058.94. Because the store was closing, the store manager assisted the stock person in loading the television into defendants' white sport utility vehicle. On August 17, 1999, defendant Zunzurovski telephoned Bank One, the entity through which he held a checking account, and notified it that checks in the range of numbers 164 through 175 had been lost. A stop payment was placed on all checks in this range at the time of the telephone call. Documentary evidence of

the stop payment call was admitted into evidence as exhibit six. The second page of exhibit six indicated that the telephone call had been placed at 3:52 p.m.

Despite this telephone call, defendants continued to utilize the checks for which the stop payment order had issued. On August 17, 1999, store clerk Gregory Koutz was working at Main Street Audio Video between 5:00 and 10:00 p.m. Defendants arrived at the store with a female and purchased a Pioneer receiver, a Pioneer DVD player, and "acoustic research figures" in the amount of \$1250.77. Defendant Suchodolski allegedly represented himself as "Alex" to Koutz. The stereo equipment was paid for by check number 169, a check for which a stop payment order had issued earlier in the day. The receipt indicated that the merchandise was sold to "Alex Zunzyrovski" of Waterford, Michigan. Defendants were asked to and did provide a local address of "700 Marks." However, it was later discovered that there was no such legal address.

On August 18, 1999, Margaret Lapham, the owner of A-1 Mini Storage, rented a storage unit to defendant Suchodolski. He told Lapham that his truck was "loaded," and he needed to get it "unloaded right away." Defendant Suchodolski was assigned unit 229, but was unable to put his belongings in the unit because the prior renter had not vacated the unit. Lapham assigned defendant Suchodolski a very large unit temporarily. The next day, Lapham called and notified defendant Suchodolski that he could come in, move to his requested unit size, and initial the change in the lease. Defendant Suchodolski failed to come in as requested.

On September 2, 1999, Officer Bill Bluemer, of the Mt. Pleasant Police Department, interviewed defendant Zunzyrovski as the victim of a crime because of the loss of the checks. Prior to speaking to defendant Zunzyrovski, Officer Bluemer was furnished with a description of his vehicle. However, when asked if he owned a white Ford Bronco, defendant Zunzyrovski denied ownership, even though the vehicle was observed in the parking lot.

On September 4, 1999, Officer Bluemer spoke to defendant Zunzyrovski a second time. Defendant Zunzyrovski acknowledged that he knew defendant Suchodolski, who drove a black Jeep Wrangler. At defendant Zunzyrovski's apartment, the officer observed a nineteen inch television. Defendant Zunzyrovski was executing affidavits for the bank regarding the stolen checks when the telephone rang. The telephone was an item listed on the ABC Warehouse receipt. A computer that was also listed on the ABC Warehouse receipt was at the apartment. Officer Bluemer seized these items and others as evidence.

On September 9, 1999, defendant Zunzyrovski asked Officer Bluemer for a meeting. They met at defendant Zunzyrovski's apartment. Defendant Zunzyrovski explained that he was supposed to receive some money from an insurance claim. As a result of the anticipated monetary award, defendants purchased items with defendant Zunzyrovski's checkbook. Defendant Suchodolski was given permission to use the checkbook. They went to ABC Warehouse and purchased the television with defendant Suchodolski executing the check. Defendant Zunzyrovski also stated that they made the purchase at Main Street Audio Video. There, defendant Suchodolski executed the check. Defendant Zunzyrovski alleged that he did not enter the store for this transaction, but waited in the car. Defendant Zunzyrovski stated that he was advised by his attorney that he would not receive the insurance claim money. Defendants panicked after receiving this information. They rented the storage unit, took the items, and placed them in storage. A search warrant was obtained for the storage unit. Some of the

property that was purchased with the checks was found in the storage unit. ABC Warehouse never received payment for the television.

Both defendants were charged with false pretenses involving property worth more than \$1,000 to \$20,000, MCL 750.218(4)(a), and conspiracy to commit false pretenses, MCL 750.157a. The district court bound over defendants as charged. Defendants moved to quash the bindovers in circuit court. The circuit court granted the motions. Specifically, the circuit court held that the prosecutor failed to provide any “evidence of specific intent to commit the charged offenses.” The circuit court stated that the testimony, that defendants purchased the items based on the belief that one of them would receive a large insurance settlement, was uncontroverted. The circuit court also held that there was no testimony to establish that the business suffered a loss based on the pretense of one defendant using the identification and signing the checks of the other with permission. The prosecutor filed a motion for reconsideration. In the motion, the prosecutor noted that an intent to defraud was evidenced by the fact that defendant Zunzurovski stopped payment on check no. 169 at 3:52 p.m., but then went to Main Street Audio Video between 5:00 and 10:00 p.m. and purchased merchandise with that check. The prosecutor also stated that the businesses did suffer losses because merchandise was released to defendants and money was not tendered in return because of the stop payment order. As evidence of intent, the prosecutor attached the stop payment order that had been admitted at the preliminary examination as exhibit six. The circuit court denied the motion for reconsideration and refused to consider the exhibit because it was “new evidence and outside of the preliminary examination transcript.”

The prosecution argues that the district court did not abuse its discretion when it determined there was probable cause for the bindover of defendants. We agree. Appellate review of a bindover decision is for an abuse of discretion. *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997). When reviewing the district court’s determination to bind over a defendant for trial, the circuit court must consider the *entire record* of the preliminary examination, and it may not substitute its judgment for that of the district court. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). Reversal is appropriate only if, from the record, it appears that the district court abused its discretion. *Id.* We review the circuit court’s decision de novo to determine whether the district court abused its discretion. *Id.* A decision constitutes an abuse of discretion when it is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). The proofs presented at the preliminary examination need only establish probable cause to believe that a crime was committed, and probable cause to believe that the defendant committed the crime. *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). Some evidence of each element of the crime must be presented, or evidence from which an element may be inferred must be presented. *Id.* Where the evidence conflicts or raises a reasonable doubt of the defendant’s guilt, it is not the function of the examining magistrate to discharge the accused because that is the assigned task of the jury. *Id.* at 469-470. However, an examining magistrate may weigh the credibility of witnesses. *People v Laws*, 218 Mich App 447, 452; 554 NW2d 586 (1996).

To establish the crime of false pretenses, the prosecution must prove: (1) a false representation concerning an existing fact, (2) knowledge by the defendant of the falsity of the

representation, (3) use of the representation with intent to deceive, and (4) detrimental reliance on the false representation by the victim. *People v Reigle*, 223 Mich App 34, 37-38; 566 NW2d 21 (1997). In the present case, the circuit court held that the prosecution had failed to establish intent to deceive because defendant Zunzurovski believed that an insurance settlement claim would cover the checks at issue. Intent presents a question of fact to be determined by the trier of fact. *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995). Intent may be inferred from all the facts and circumstances. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). When competent evidence can both support and negate an inference, a factual question arises that must be left to the jury. *People v Northey*, 231 Mich App 568, 575; 591 NW2d 227 (1998).

The circuit court erred in concluding that the prosecution failed to present evidence to establish intent to deceive by relying on defendant Zunzurovski's statement that he expected a settlement from an insurance claim. The credibility of that assertion presented a question for the trier of fact based on all the facts and circumstances. *Nelson, supra*; *Kieronski, supra*. Furthermore, defendant Zunzurovski's statement of the lack of intent to deceive is contrary to his actions. Defendant Zunzurovski allegedly gave defendant Suchodolski permission to use check number 169 to purchase merchandise for their enjoyment. When defendant Zunzurovski learned that the insurance settlement would not arrive, defendants did not immediately return the merchandise, but placed the items in storage. The explanation and surrounding facts can either support or negate the inference of an intent to deceive, contingent upon the determination of credibility, and therefore, a factual question arises that must be resolved by the trier of fact. *Northey, supra*.

The circuit court also held that the prosecutor had failed to prove that the businesses suffered a detriment based on defendants' representations. We disagree. Review of the record reveals that the two stores released property based on the reliance that it had been "sold" to defendants. The stores were not paid for the merchandise because a stop payment order was placed on the checks. Accordingly, the circuit court's conclusion is contrary to the record, and the circuit court erred in concluding that the district court abused its discretion when it bound defendants over for trial. *Orzame, supra*.<sup>1</sup>

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood  
/s/ William C. Whitbeck  
/s/ Patrick M. Meter

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<sup>1</sup> The circuit court also erred in concluding that it could not consider the admitted exhibit from the preliminary examination. The circuit court should have considered the *entire record*. *Orzame, supra*.